

FILED

1 WILLIAM JOHN DAUGHTERY

2 F-79985

2008 MAY -6 PM 2:51

3 P.O. Box 2349 / DIO-1104P

CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

4 CHUCKAWALLA VALLEY STATE PRISON

BY Rm DEPUTY

5 BLYTHE, CA. 92226

NUNC PRO TUNC

APR 30 2008

10 WILLIAM JOHN DAUGHTERY, CDCR

11 # F79985,

12 PLAINTIFF,

13 v.

14 DENNIS WILSON, SANDIEGO POLICE

15 OFFICER; ESMERALDA TAGABAN, SAN

16 DIEGO POLICE OFFICER; SERGEANT

17 GRIFFIN; DETECTIVE LEMUS

18 DEFENDANTS

CASE NO. 08CV0408-WQH(BLM)

MOTION TO AMEND PLEADING

AND FILE ADDITIONAL PLEADINGS

AND MOTION FOR CONTINUANCE

AND MODIFY DATES LISTED IN

THE ORDER REGULATING

DISCOVERY AND OTHER PRE-TRIAL

PROCEEDINGS.

DATED: 25 APRIL 2008

20 I, WILLIAM JOHN DAUGHTERY, CDCR, #79985, THE

21 PLAINTIFF IN THE ABOVE ACTION, A PERSON PRESENTLY

22 INCARCERATED IN CHUCKAWALLA VALLEY STATE PRISON; AN

23 INDIGENT PERSON; PROCEEDING AT PRESENT IN **FORMA**24 **PAUPERIS**; AWAITING GRANT OF REQUEST FOR APPOINTMENT25 OF COUNSEL, DO HEREBY **REQUEST AND MOTION** FOR26 **ADDITIONAL TIME FOR GOOD CAUSE, AS LISTED BELOW,**27 **AND TO ADD THE FOLLOWING ENTITIES AND MOTION TO**28 **JOIN AND AMEND THE PLEADINGS TO ADJUST THE**

PAGE (2)

REQUEST FOR DAMAGES AND PUNITIVE DAMAGES
TO REFLECT ADDITIONAL FINANCIAL BURDENS INCURRED
IN PURSUING THIS CLAIM.

I. FACTS IN SUPPORT OF CONTINUANCE

1.) I AM AT PRESENT, WITHOUT COUNSEL OR INVESTIGATOR
SERVICES, WITH WHICH TO DISCOVER, LOCATE, PROCESS;
WITNESSES EXPERT OR/AND PERCIPIENT; EXHIBITS, STUDIES
AND OTHER MEANS WHEREBY TO EFFECTIVELY PRESS MY SUIT.

2.) I AM, AS AN INCARCERATED PARTY, EXTREMELY LIMITED
AS TO MOVEMENT AND COMMUNICATION WITHOUT THE PRISON
CONFINES, AND SEVERELY RESTRICTED TO ACCESS TO LAW
MATERIALS INCLUDING TYPEWRITERS, ETC. SEE EXHIBITS A, B

3.) UPON APPOINTMENT OF COUNSEL, HE WILL BE TASKED WITH
ASSEMBLING AND COLLATING THE FOLLOWING NECESSARY MATERIALS.

A. EYEWITNESSES: (1) MR. ROBERT MONTGOMERY, AN EYEWITNESS
FROM A DISTANCE OF (1) ONE FOOT FROM ASSERTED EVENTS.

MR. MONTGOMERY IS A STATE PRISONER AS OF MAY 2007.

(2) MR. TYSON, AN EYEWITNESS FROM A DISTANCE OF (15) FIFTEEN
FEET FROM COMPLAINED EVENTS. MR. TYSON IS A PROBATIONER
IN SAN DIEGO COUNTY AS OF MAY 2007.

B. EXPERT WITNESSES: (1) AN ACCREDITED EXPERT ON
POLICE TACTICS AND TRAINING, PREFERABLY KNOWLEDGEABLE
IN SAN DIEGO POLICE FORCE. (CONT.)

FACTS IN SUPPORT OF CONTINUANCE PAGE (3)

EXPERT TO ILLUSTRATE UNREASONABLE REACTION
OF POLICE IN DETENTION, ARREST AND ASSAULT.

② ANY OTHER EXPERT WHICH A COMPETENT ATTORNEY
WOULD EMPLOY TO STRATEGIC ADVANTAGE.

PRESENTLY, THERE IS A DEADLINE OF JULY 18, 2008 TO
ASSEMBLE THE ABOVE UNDER 702, 703 OR 705 FEDERAL
RULES OF EVIDENCE AND TIME IS REQUIRED TO AVOID
SANCTIONS PROVIDED FOR IN FEDERAL RULES OF CIVIL PROCEDURE
37, AND THE EXPERT DISCLOSURE DATE OF 9-19-02
AND REBUTTAL DATE OF OCTOBER 3, 2008 PER
FEDERAL RULES CIVIL PROCEDURE 26 (a) (2) ARE LIKELY
TO BE PRECIPITATE AND UNMET.

C. TRANSCRIPTS; INASMUCH AS THERE EXISTS COPIOUS
AMOUNT OF MATERIAL FROM THE RELATED CRIMINAL TRIAL
THAT WOULD ASSIST AN ATTORNEY INCLUDING POLICE REPORTS
LOCATION OF WITNESSES AND OTHER DATA AND DOCUMENTS,
ADDITIONAL TIME IS NEEDED.

D. EXHIBITS; INASMUCH AS THERE IS SUBSTANTIAL EXHIBITS
FROM SAID TRIAL THAT COULD SERVE IN THE CIVIL ACTION
AND NEW EXHIBITS INCLUDING MEDICAL AND MENTAL
REPORTS NOT PREVIOUSLY SUBMITTED MUST BE PREPARED.

E. A PITCHES MOTION IF NECESSARY, RULE 45, 30-36 FED. CIV. P.

F. TIME TO COORDINATE THE TELEPHONIC APPEARANCE
MANDATED AT 9:30 AM BEFORE MAGISTRATE JUDGE
BARBARA L. MASOR ON NOVEMBER 19, 2008 MANDATORY
SETTLEMENT CONFERENCE.

FACTS IN SUPPORT OF AMENDED PLEADING PAGE (4)

I.

1) THE SALARY AND EXPENSES OF EXPERT WITNESSES WAS NOT PREVIOUSLY CALCULATED.

2) DEFENDANTS WILL BE REPRESENTED BY THE CITY ATTORNEY, THUS THE SAN DIEGO POLICE DEPARTMENT AND THE CITY OF SAN DIEGO AS A CORPORATE ENTITY IS REQUIRED AND REQUESTED TO BE NAMED AND LISTED AS DEFENDANTS IN ADDITION TO PRESENT DEFENDANTS.

3) THE EXTENT AND SEVERITY OF PLAINTIFFS PHYSICAL INJURIES AND THE LIKELY HOOD OF LONG TERM EFFECTS WERE NOT FACTORED INTO ORIGINAL ESTIMATE OF DAMAGES.

4) PLAINTIFF IS A MENTALLY DISABLED PERSON AND THE DELETORIOUS EFFECTS AND EXACERBATION OF EXISTING CONDITION DUE TO TRAUMA WERE NOT FACTORED.

THEREFORE IT IS RESPECTFULLY REQUESTED THAT THE DOLLAR AMOUNT OF DAMAGES BE INCREASED TO 2.5 MILLION DOLLARS AND PUNITIVE TO 1.5 MILLION DOLLARS PENDING APPOINTMENT AND CONSULTATION WITH COUNSELLING ATTORNEY(S).

1 DECLARATION OF SERVICE OF MOTION TO DEFENDANTS
2 BY UNITED STATES MAIL AND CERTIFICATION
3 OF FACTS RELIED ON IN MOTION FOR
4 CONTINUANCE AND MOTION FOR AMENDED COMPLAINT
5 AND PLEADING.

6
7 I, WILLIAM JOHN DAUGHTERY, THE PLAINTIFF IN
8 THE ABOVE TITLED ACTION DO HEREBY SWEAR, ATTEST
9 AND CERTIFY THAT THE ABOVE IS A TRUE AND
10 ACCURATE STATEMENT AND REPRESENTS, TO THE
11 BEST OF MY KNOWLEDGE, THE FACTS.

12 I AM AN INDIGENT, INCARCERATED PERSON, NOT
13 PRESENTLY REPRESENTED BY COUNSEL AND
14 HERewith AFIX MY SIGNATURE UNDER PENALTY
15 OF PERJURY.

16 A COPY OF THIS MOTION HAS BEEN DELIVERED TO
17 THE ATTORNEY FOR DEFENDANTS TAGABAN AND
18 GRIFFIN: MICHAEL J. AGUIRRE, CITY ATTORNEY

19 WENDY E. DAVISSON, DEPUTY CITY ATTORNEY

20 CALIFORNIA STATE BAR NO. 199146

21 OFFICE OF THE CITY ATTORNEY

22 1200 THIRD AVENUE, SUITE 1100

23 SAN DIEGO, CALIFORNIA 92101-4100

24 TELEPHONE (619) 533-5800 FAX: (619) 533-5856

25 RESPECTFULLY SUBMITTED

26 EXECUTED: 25 APRIL 2008

27 WILLIAM DAUGHTERY

Exhibit A
Submitted 5-4-25-08

Massive flu outbreak hits inmates

550 SICKENED: Officials at a state prison near Blythe investigate if two deaths were caused by the illness.

BY JOHN ASBURY
AND JOSE ARBALLO JR.
THE PRESS-ENTERPRISE

Prison officials in Blythe are investigating whether the deaths of two inmates are related to a flu outbreak that has sickened nearly 550 prisoners in less than a month.

Chuckawalla Valley State Prison is in lockdown and ac-

commodation spokesman Terry Thornton. Earlier this year, a flu outbreak affected 200 inmates at a prison in Susanville in Northern California, Thornton said.

Since Feb. 23, at least 546 of Chuckawalla's 3,100 inmates have become sick, experiencing flu-like symptoms such as fever, nausea and cold sweats, Thornton said. Ten inmates have been hospitalized, including some who were transferred to Riverside County Regional Medical

Center in Moreno Valley. The Chuckawalla prison is divided up into dormitories, with only three of the facilities infected with influenza, Thornton said. Some employees are also sick.

The quarantine means no visitations will be allowed to the 1,500-acre prison and volunteers are being turned away. One inmate died March 1 and the other two days later, according to state officials. The in-

mates were not identified, but their ages were 53 and 35. Officials said they have not determined whether the deaths were caused by the flu. State officials declined to disclose where the men died.

Lilly Lopez, assistant administrator of Palo Verde Hospital in Blythe, said two inmates from Chuckawalla, including one of the ones who died, were brought to the Palo Verde emer-

SEE FLU/49

FLU: Illness spread to Chuckawalla Valley prison from nearby Blythe, where cases spiked recently

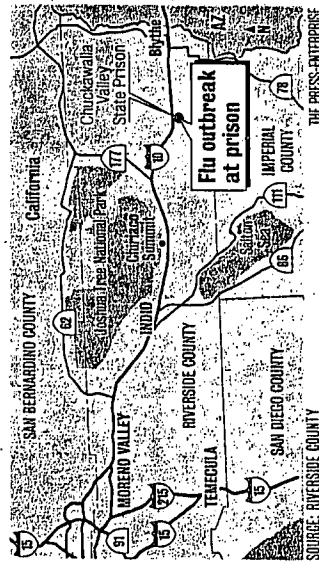
Blythe's population is about 22,000.

Assistant City Manager Charles Hull said he was notified about the problems Thursday and was assured that everything was being done to prevent the spread of the illness. He said residents of the desert community are discussing the flu outbreak in the area and know it's a potentially serious matter, but no one is panicking.

"It is more of a wait-and-see situation," said Hull, who became sick with the flu himself two weeks ago. "The entire valley is going through this wave of the flu and it is making its way through the prison."

Hull, the head of the city's emergency services, said city officials are prepared if there is a need for assistance.

All of the inmates affected are released.



tal's infirmary. Prison officials are sterilizing dining halls and other areas, as well as conducting wellness checks.

Inmates scheduled for parole are also being evaluated and given a list of health precautions to take before they are released.

ease," Thornton said.

This year's flu season has taken a particularly hard toll on the Inland region, but not as intense as the flu season in 2003. Blythe, where it spiked in February and is now starting to decline, Cole said. It's not unusual to have flu outbreaks heading into early spring, she said.

Influenza and pneumonia deaths are up about 10 percent this year, compared to the same period last year, Cole said. About 16 percent of the deaths during one period this year were caused by the illnesses. Countywide, health officials have noted a higher number of influenza patients going to hospital emergency rooms.

The flu vaccine being distributed was not an exact match for the virus circulating this year.

contributing factor, she said.

"The process of vaccines starts six to eight months ahead of flu season," Cole said. The World Health Organization and the Centers for Disease Control and Prevention predicts which strains of influenza will be active.

"But sometimes another virus shows up that's not included in the vaccine," Cole said.

The Palo Verde Unified School District in Blythe has not seen any more cases of the flu than usual, or had a higher rate of absences, said Jacob Jensen, director of special services for the district.

"As far as I know we haven't seen any more adverse flu than is typical for this time of year," he said.

Staff writers David Olson and Shira Parswand contributed to this report.

Case No: 08CV0408 - WQH (BLM)

State of California

California Department of Corrections and Rehabilitation

Memorandum

Date: March 5, 2008

Submitted 4-25-08

To : All Facility D Staff and Inmates

Subject: **INFLUENZA EXPOSURE**

Chuckawalla Valley State Prison (CVSP) is experiencing significant numbers of inmates with influenza symptoms. Most of these cases have impacted Facilities A and B. However, Facility D has a few occurrences. Based on recommendations from medical services, all visiting and volunteer activities will be cancelled for this weekend (March 8 and 9, 2008). The following are basic precautions to minimize your possible exposure to the flu.

- Practice good personal hygiene by continuously washing your hands with soap and water.
- Sanitize all areas others touch; such as showers, railings, seats etc.
- Refrain from sharing food, beverages, dishes and utensils.
- Staff should utilize gloves when conducting bed area and clothed body searches. Upon completion, immediately wash your hands with soap and water.

It is imperative every effort is made to sanitize areas with high usage. The facility sergeant will distribute bleach to each housing unit. The bleach shall be mixed with water to ensure 25 parts water to 1 part bleach solution. Wash all railings, seats, tabletops and every other high traffic areas to minimize the possible contamination. If you experience nausea, vomiting, diarrhea, chest congestion seek medical attention.

CVSP will continue to monitor and evaluate the status of the institution and visiting for next week.



A. A. TERHUNE
Facility D Captain